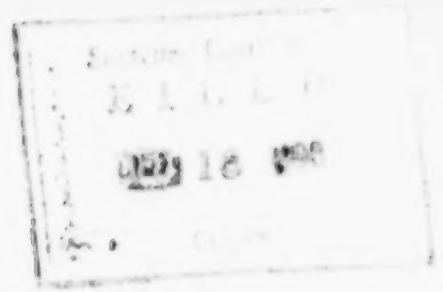


(3) 3
No. 98-796, 98-829



**In The
Supreme Court of the United States**

October Term, 1998

UNITED STATES OF AMERICA,
Petitioner,

vs.

FLORIDA BOARD OF REGENTS, et al.,
Respondent.

FLORIDA DEPARTMENT OF CORRECTIONS,
Petitioner,

vs.

WELLINGTON N. DICKSON, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR WELLINGTON N. DICKSON

GERALD J. HOULIHAN
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OPINION BELOW

The opinion of the court of appeals (Pet. App. A-1a - A-50a) is reported at 139 F.3d 1426.

JURISDICTION

The court of appeals entered its judgments on April 30, 1998. Petitions for rehearing were denied on August 17, 1998. (Pet. App. E-70a-72a) The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions involved are set forth at Pet. App. F-86a-102a.

DISCUSSION

1. The Age Discrimination in Employment Act of 1967

The United States of America has petitioned for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit relating to The Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 et seq., which determined in a split opinion that the Congress did not make clear its intent to abrogate Eleventh Amendment immunity.

The judgment of the Eleventh Circuit has significantly eroded the scope of important civil rights legislation. Moreover, the decision is in direct conflict with the ruling of

at least five other circuits, which have upheld the ADEA's abrogation of States' Eleventh Amendment immunity.

Rather than submit further legal argument, Petitioner Dickson adopts all of the reasons articulated by the United States of America in its Petition. In addition, Petitioner Dickson incorporates the legal argument supporting review, as is set forth in his Petition for a Writ of Certiorari (No.98-791), on the judgment of the circuit court on the issues relating to the ADEA. The Petitions should be granted.

2. The American With Disabilities Act

The Florida Department of Correction, through the Attorney General of the State of Florida, has petitioned for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit relating to The Americans With Disabilities Act (ADA), 42 U.S.C. 12101, *et seq.*, which has determined that the Congress make clear its intent to abrogate Eleventh Amendment immunity.

The judgment of the Eleventh Circuit follows the nearly uniform reasoning of the circuit courts relating to this exercise of Congressional power. The District Court and the Eleventh Circuit each determined that the ADA is a valid and clear exercise of Congressional intent.

Respondent Dickson opposes the petition for a writ of certiorari by the State of Florida Department of Corrections on the ADA. Rather than submit further legal argument, Respondent Dickson adopts all of the reasons articulated by the United States of America submitted in its opposition to the State of Florida Petition for a Writ of Certiorari on the

judgment of the circuit court on the issues relating to the ADA. The State of Florida Petition should be denied.

CONCLUSION

The petition for writ of certiorari should be granted for the review of the decision relating to the ADEA.

The State of Florida petition for writ of certiorari to review the decision relating to the ADA should be denied.

Respectfully submitted,

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